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TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/771,898	
	Filing Date	2/4/2004	
	First Named Inventor	Dennis Piper	
	Art Unit	3765	
	Examiner Name	Rodney M Lindsey	
Total Number of Pages In This Submission	12	Attorney Docket Number	AFF013USPT02

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APPEAL BRIEF			Docket No. AFF013USPT02
Serial No. 10/771,898	Filing Date 2/4/2004	Examiner Lindsey, Rodney M	Group Art Unit 3765
Applicant:	Dennis Piper		
Invention:	PROTECTIVE HEADGUARD		

Mail Stop Appeal Brief - Patents
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Dear Sir:

This Appeal Brief is filed on appeal from the decision of the Examiner dated November 10, 2005 and the subsequent Advisory Action dated December 13, 2005 rejecting claims 25-27 in the above-referenced patent application.

REAL PARTY IN INTEREST

The real party in interest in connection with this appeal is Full90 Sports, Inc. as assignee of the entire right, title and interest in the application from the inventors Dennis Piper, John Lampe and William Cleveland. The assignment is recorded at reel/frame 014672/0685.

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RELATED APPEALS AND INTERFERENCES

Appellant and appellant's legal representative are unaware of any other appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

The application was filed on February 4, 2004 with claims 1-22. Claims 1-3 were amended, claims 14-21 canceled and new claims 23-27 added in an Amendment and Response filed on October 14, 2005. Claims 26 and 27 were amended and claims 1-13 and 22-24 canceled in an Amendment and Response After Final filed on December 6, 2005. Claims 25-27 remain pending in the application. Claims 25-27 have been finally rejected. No claims have been allowed.

The rejection of claims 25-27 is appealed. A copy of the claims involved in this appeal is provided in the Appendix section of this Appeal Brief.

STATUS OF AMENDMENTS

Claims 26 and 27 were amended and claims 1-13 and 22-24 canceled in an Amendment and Response After Final filed on December 6, 2005. The Examiner indicated in an Advisory Action dated December 13, 2005 that the proposed amendments will be entered for purposes of appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

The Present Claimed Invention is a protective headband [409] with overlapped inner [413] and outer [414] layers attached at a pair of diametrically opposed points of attachment [unnumbered] located on the right and left sides [unnumbered] of the headband [409] so as to

permit pivoting of the outer layer [414] relative to the inner layer [413] about a pivot axis [unnumbered] extending through these points of attachment. [Paragraph 0069 and Figure 8].

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 25-27 as anticipated by Lovell (United States Patent No. 4,307,471).
2. The rejection of claims 25-27 as obvious over Lovell (United States Patent No. 4,307,471) in light of Nomiyama (United States Patent No. 4,012,794).

ARGUMENT

Objections/Rejections Under 35 U.S.C. § 102

- 1.0 *The Examiner has rejected claims 25-27 as anticipated by Lovell.*

SUMMARY OF CITED REFERENCE

Lovell (United States Patent No. 4,307,471) discloses a protective helmet comprising overlapped inner and outer layers attached at multiple points so as to permit the inner and outer layers to move towards and away from one another.

SUMMARY OF CLAIMED INVENTION

The Present Claimed Invention is a protective headband with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment with one point of attachment located on the right side of the headband and the other located on the left side of the headband. This attachment system allows the outer layer to pivot relative to the inner layer about a pivot axis extending through these points of attachment, with the ability to locate the points of attachment anywhere on the headband so long as the points of attachment are diametrically opposed.

LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, UHybritech Inc. v. Monoclonal Antibodies, Inc.* U, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *UKloster Speedsteel AB et al. v. Crucible Inc. et al.* U, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, UVerdegaal Bros. v. Union Oil Co. of California* U, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *UAtlas Powder Co. v. E.I. duPont De Nemours & Co.* U, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

LOVELL DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.

The Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit *pivoting* of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment. The inner and outer layers on the helmet disclosed by Lovell are attached at multiple points along each side of the helmet, thereby preventing the inner and outer layers from pivoting. The helmet disclosed by Lovell achieves movement of the outer layer relative to the inner layer by employing longitudinally elongated slots in the outer layer at the points of attachment, thereby permitting the outer layer to *lift* away from the inner layer.

Objections/Rejections
Under 35 U.S.C. §103

2.0 The Examiner has rejected claims 25-27 as obvious over Lovell (United States Patent No. 4,307,471) in light of Nomiyaama (United States Patent No. 4,012,794).

SUMMARY OF CITED REFERENCES

Lovell (United States Patent No. 4,307,471) discloses a protective helmet comprising overlapped inner and outer layers attached at multiple points so as to permit the inner and outer layers to move towards and away from one another.

Nomiyaama (United States Patent No. 4,012,794) discloses a protective helmet comprising superimposed inner and outer layers rotatably attached at a single point located at the apex of the helmet so as to permit the outer layer to rotate relative to the inner layer about the vertical axis of the helmet.

LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaack, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

As to the first criterion, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5

U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *See*, M.P.E.P. § 2143.01.

*LOVELL AND NOMIYAMA DO NOT DISCLOSE, TEACH OR SUGGEST
ALL ELEMENTS OF THE CLAIMED INVENTION.*

The Present Claimed Invention is a protective headband with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment with one point of attachment located on the right side of the headband and the other located on the left side of the headband. This attachment system allows the outer layer to pivot relative to the inner layer about a pivot axis extending through these points of attachment, with the ability to locate the points of attachment anywhere on the headband so long as the points of attachment are diametrically opposed. The inner and outer layers on the helmet disclosed by Lovell are attached at multiple points along each side of the helmet, thereby preventing the inner and outer layers from even pivoting. The inner and outer layers on the helmet disclosed by Nomiya pivot relative to one another, but are attached at a single point located on the vertical axis of the helmet. Neither Lovell nor Nomiya disclose, teach or suggest attachment of inner and outer layers of a headband at a pair of diametrically opposed points of attachment with one point of attachment located on the right side of the headband and the other located on the left side of the headband.

CONCLUSION

Applicant respectfully submits that all pending claims (claims 25-27) are in condition for allowance.

Respectfully submitted,

Date

31 Jan 06

By



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CLAIMS APPENDIX**PENDING CLAIMS**

*United States Patent Application
Serial No. 10/771,898*

25. A protective headguard, comprising overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment, with frictional sliding of at least one area of the outer layer over the inner layer when the outer layer is pivoted about the pivot axis relative to the inner layer.
26. The protective headguard of claim 25 wherein the protective headguard includes a right half and a left half and the pivot axis extends laterally through both the right half and the left half of the headguard.
27. The protective headguard of claim 25 wherein the inner and outer layers are biased towards a standard position relative to one another.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE